Town of Milford
Zoning Board of Adjustment Minutes
November 6, 2014
Variance
Case #2014-18
Roland P. & Clara Y. Ayotte

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice Chair
Mike Thornton
Joan Dargie
Len Harten, Alternate

Excused: Laura Horning
Katherine Bauer – Board of Selectmen's representative

Secretary: Peg Ouellette

The applicants, Roland P. and Clara Y. Ayotte, owners of Map 6, Lot 40, located at 113 Savage Road, in the Residential R District, is requesting a Variance from Article V, Section 5.04.A, to allow the subdivision of a 2.12 acre residential lot with less than the required 200' of continuous frontage on a Class V or better road (Proposed lot will have approximately 150' of frontage on Savage Road and approximately 90' of frontage on Woodward Drive for a total of approximately 249' of frontage on Class V roads).

Minutes Approved on December 18, 2014

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinances and the applicable New Hampshire statutes. He continued by informing all of the procedures and introduced the board. He read the notice of hearing into the record. The list of abutters was read. Abutters Paul F. Cunningham, Suzanne Fournier, Ellen Needham, and Donald J. Labonte were present. Roland and Clara Ayotte, owners of Map 6 Lot 40, 113 Savage Road, were present along with their attorney, C. Wilson Sullivan.
Z. Tripp mentioned a conversation he had with Bill Parker, Community Development Director and Zoning Administrator, and his understanding of the process of lot subdivision, for the benefit of Board members, applicants and the audience. The applicants have two lots, 6/40 and 10/8. Usually they would go to the Planning Board for a lot consideration and re-subdivision plan, combine two lots into one and subdivide that new large lot into two new lots. The applicants were in front of the ZBA since one of the proposed lots didn't have required frontage for Residential R. If the Board

found that the applicants satisfied the five criteria for a variance for reduced frontage for one of the two lots, the applicants would still have to go to the Planning Board. ZBA was there to look at one of the proposed new lots that did not have the frontage. They were looking at the frontage and whether that reduced frontage meets the five criteria. He then invited the applicants forward to present their case.

Attorney Sullivan came forward; and explained he was there for a variance because it was the easiest approach. An argument could be made that there was a small lot and without going before the ZBA he believed he could possibly go to the Planning Board, expand the size and still have a non-conforming lot but a bigger non-conforming lot that he could get a building permit on. He stated for the record they weren't conceding that perhaps they didn't need to be before the ZBA, but this in some ways was the easiest approach. The Ayottes have two lots of record now which are slightly over five acres when combined. They propose creating two lots with the so-called substandard lot having about 50 ft more frontage than necessary but not contiguous frontage; it does meet the acreage requirements. The property abuts an industrial zone that is built out, and across the street on the other side of Savage Road is a detached condo project area with houses close together. Abutters to the south have lots approximately of ¼ acre. The proposed lots in question are all about four times the size of any surrounding lots that exist. This particular piece has industrial land on one side and condos on the other and very small lots on the other side. He thought it met the five criteria necessary to meet the requirements for granting a variance.

Z. Tripp showed the full-size plan to the audience and pointed out the current lot 6/40, and the smaller lot off Woodward which is 10/8. He stated the two lots would be combined into one. The main lot was 4.8 acres and other 0.28 acres with total of five plus acres. He pointed out the proposed subdivision of the larger lot which would leave a compliant lot with the current house on it. The new lot would be L-shaped, in compliance with lot size but would have 150 ft. on Savage Road and 100 or 99 ft. on Woodward.

C. Sullivan said that was correct. He said it was a rather simple argument. Residential use in a residential zone wasn't going to diminish property values. It was not a use variance that was being requested. The spirit of the ordinance and substantial justice, given the nature of the surrounding properties, and hardship has been met.

Z. Tripp asked for questions from the Board.

J. Dargie noted that lot 6/41 had a drive, which must be itsonly access, that would be the only road access.

C. Sullivan agreed.

J. Dargie asked if 10/8 was currently a grandfathered buildable lot.

C Sullivan said he supposed so if you could get a septic system in there.

J. Dargie asked whether the PSNH easements were all transferable to another deed on a new lot.

C Sullivan said yes.

J. Dargie mentioned another right of way on the new 10/8, looking like it was 30 ft and asked whether that was built in from previous years and whether it was a town right of way or access to the back lot.

R. Ayotte stated it was 30 ft right of way. He thought it was supposed to come out. He said it was access to the back lot.

C. Sullivan said in that case it would never be used.

Z. Tripp stated the Planning Board would have to work out a lot of those issues as they go through the lot consolidation subdivision plan.

J. Dargie asked whether access for the new lot would be out to Savage Road or Woodward.

R. Ayotte responded it would be to Savage Rd.

Z. Tripp said for the record, with the current plan, if they built on the lot it would access to Savage.

C. Sullivan agreed.
M. Thornton inquired how the ¼ acre lots came to be in an area where two acres was the minimum.
C. Sullivan mentioned a change in 2001 in Residential R which increased road frontage requirement from 150 ft. to 200 ft. and was expanded from one acre to two acres.
Z. Tripp said according to tax maps on-line the majority of houses on Woodward were built mid- to late 50's
C. Sullivan said that most towns around here adopted zoning in the late 60's.
M. Thornton asked if there were two buildable lots now.
C. Sullivan didn't know about 10/8 because he hasn't perked it and tested it. This went with his opening statement about expanding a non-conforming lot. In his opinion one has a right to expand a non-conforming lot. You cannot make the land you are adding on, make the other lot non-conforming. That goes to his initial statement that he wasn't 100 percent sure they needed a variance.
Z. Tripp asked about the rationale of appending the 0.28 acre lot to the larger lot. Why not keep them two separate lots and subdivide the larger lot.
C. Sullivan said there is a right of way running through. Even if you could put a house on there you have a right of way running to 6/41. If it were physically possible to put a house there it might not be aesthetically pleasing.
Z. Tripp asked for any further questions from the Board. There were none.
Z. Tripp opened the meeting for public discussion.
Robert Wisniewski came forward. He stated he was not an abutter but lived on Woodward Dr. He had some historical information. Those lots on Woodward were all grandfathered because the original plan and subdivision by Lorden Lumber was drawn up in 1963, with the lots being sold in years after that. There was no zoning in the Town of Milford until 1968. He has the original map; he was Chairman of the Board. He'd be happy to answer any other historical questions. That lot is not buildable because it is under PSNH high-tension wire.
Z. Tripp asked if the entire width of 10/8 was an easement.
R. Wisniewski said that was correct. It is under the wire and you are not allowed to build any other type of structure.
S. Fournier of 9 Woodward Dr. came forward. She is an abutter of 6/40 and 10/8. She said she would provide additional information and point out errors and omissions.
Z. Tripp made it clear the only criteria they were evaluating was reduction in frontage.
S. Fournier stated her response was to the application. She made the following points:

1. Re Woodward Dr. as frontage, the applicants showed frontage approx. 100 ft. where the Public Service right of way is located. It didn't meet the definition of frontage because it cannot provide access to any lots then it already did. Lot 10/8 was already providing access to two existing lots, not just 6/41. Lots 6/41 and 10/8 are two lots. 10/8 has a private way on it with one drive providing access to two lots. It was subdivided by the applicants in '89. She pointed to a 17 acre lot owned by applicants. She cited restrictions to two lots because of '89 subdivision, a restriction by the ZBA at that time and a covenant made by applicants with the town stating that the driveway on lot 10/8 would be a private road going to the two lots of 6/41and 41-1 in perpetuity. Because Lot 10/8 cannot provide access to a new lot, it cannot be considered frontage.

2. Re frontage on Savage Rd., the 150', the width of the property is reduced as it goes along, to less than the frontage, approx. 7 ft., asking why it should be anything less than the actual frontage.

M. Thornton stated that doesn't address the shape of the lot, only the frontage.

S. Fournier continued that the application is for approximately 150' and questioned if there was a need for more precision.
Z. Tripp stated, regarding the width, it appeared to widen out again.
M. Thornton said it becomes wider than the frontage.
She wanted the Board to look at the width, noting it was likely where a house would be located.

3. Re the neighborhood, applicants describe the neighborhood as 6/40 and word "industrial" was used several times. She felt that relevant information was omitted. 6/40 is located at the boundary of the residential zone, as are several other properties. The residential zone begins with them and goes south to Brookline, west to Wilton and east to Osgood Rd. Lot 6/40 is within the residential zone. It may feel like an industrial area to the applicants for two reasons. In 2012 the applicants cut down a large area of forest, the buffer to Scarborough Ln. They insisted on having a large conspicuous business, a furniture business, which uses 1536 SF, three-bay warehouse not shown on the applicants' conceptual plan.

Z. Tripp stated, for the record that is all that is on what would be a conforming lot after the subdivision, not on the lot being discussed.
S. Fournier stated the application discusses the five acres.
Z. Tripp said he just wanted to clarify which lot she was talking about.

4. S. Fournier said the town assesses the 6/40 as Code 1010 for a single-family home. While 6/40 sits on the boundary of the industrial district the main neighborhood is residential. Several other 5 acre lots in the area, along with the apartments, form the buffer to the industrial zone for the smaller lots. Losing part of the buffer to development is a loss to abutters.

There was discussion among Z. Tripp, M. Thornton and S. Fournier as to whether there was a loss of buffer or any other loss, since, as Z. Tripp pointed out, there would still be a compliant 2 acre lot.
S Fournier stated any further development of 6/40 in the new proposed area changes the buffer and cutting trees gives the abutters more visibility of the industrial area.
Z. Tripp wanted to stay focused on any losses attributed to reduction in frontage, since if that lot was 50 ft. wider, they wouldn't be here.
S. Fournier stated with it being 50 ft. shorter, any house would be closer in terms of visibility, etc.
F. Seagroves said that would depend on the property. They don't know where a house would be built. The only buildable part could be 50 ft. from the property line.
M. Thornton asked whether the neighbors close to her bothered her, since this appeared to be further away across the road than the houses next to her.
S. Fournier said it wasn't a road. It was the back yard. She doesn't see structures [from her lot] All the neighbors have large back yards and there are wetlands.

5. Re density, this is why the town requires 200 ft frontage and the xisting structures on 6/40 are the 1872 sq. ft house, 128 sq ft shed, and 1536 sq. ft. warehouse.

Z. Tripp said those were all conforming structures on a conforming lot. The focus is on the frontage on the adjoining lot. M. Thornton agreed.
S. Fournier said she was addressing density. Currently there was quite a bit of density and use. Abutters on the small lots don't feel crowded because of a lot of open space that reduces noise from the industrial. If a house, garage and driveway were built, they would feel more crowded. A driveway cut on Savage Rd would impact traffic. Savage Rd. and Scarborough Ln and Woodward Dr are all very busy after work.

6. Re ability to use the lot, applicants claim they cannot make enough use of their lot and need to subdivide. There is an 8-room house, fence and large business. That is a lot of use

which has been since 2012. Nothing is preventing them from using it this way. It has been since 1973 off and on and 4.8 acres of their lot contains wetlands that limit development. Where the house could go might be a very confined area. Wetlands delineated but are not shown on the conceptual plan.

Z. Tripp said those are all Planning Board issues and the permit process.

S. Fournier said there is impact by reduced frontage. She pointed out wetlands and a swamp that PSNH has to avoid when they do cutting.

M. Thornton didn't see how this affected frontage.

Z. Tripp said a Milford person was presenting information to the Board and it was up to the Board to take that and see how it applied to the five criteria.

7. S. Fournier said that 6/40 is not special due to its five acres. It is in line with other two properties east- west at the edge of the industrial. Carving it up would make it different.

In closing, S. Fournier said applicants bought the lot in 2012 being aware of the 200 ft. requirement. They are using it quite substantially and can continue to do so without a variance; they are allowed a grandfathered variance for the business. Adding a house, garage and drive will further crowd abutters with already small lots who depend on the open space as a buffer to development and the Scarborough Ln. businesses.

Ellen Needham of 21 Woodward expressed concern re the view and buffer zone. It was stated they will use Savage Rd. She wouldn't know that until they got to the Planning Bd. It will increase traffic and tearing down trees increases noise level. She lives on a hill and it would affect her view.

Don Labonte of 5 Woodward Dr. said it is a simple problem. They need 200 ft, which they don't have. If the lot was wide open you could give a variance. But there are houses there, building a house would increase density. Applicants will make money. They will build a house and sell it and go back to where they live; they don't live in Milford. The neighbors will be stuck with the view. He asked the Board to take that into consideration.

Paul Cunningham of 9 Woodward Dr. said re frontage, he found that small area of 99 ft is unbuildable; it is an easement. To add that which can't be used, to the frontage on Savage Rd. doesn't comply with the 200 ft frontage requirement. It cannot be used as frontage for anything. To try to add it on to justify building on that lot currently, which is already being used, will increase density in his opinion to put another house between the existing one and where he lives. For density and decline of quality of life for residents of Woodward Dr. and the technical issue of frontage, doesn't satisfy the definition. Adding that on to some equation to come up with that 200' is, in his opinion, inappropriate.

R. Wisniewski addressed the issue of frontage. Bud Zahn originally owned the house the Ayottes currently own. He sold them the back lot of approximately 25 acres west of the PSNH service line and a little 30 ft wide lot as a way to access. That would have given them a 500 ft. drive and would have required wetland permits, etc. Mr. Ayotte wanted to build two houses, one for himself and one for his studio work area. Mr. Wisniewski came to an agreement to sell him a small lot on Woodward Dr for access without the long driveway. That is how the Ayottes came into the lot. Part of the agreement was it was to only be used for access to the two lots, with no more than two dwellings. If this variance is accepted, it must be understood there cannot be a third access, per the agreement. Addressing concerns of neighbors on Woodward, it would probably be an impossible access because they would have to go through ledge about six ft above ground and a wet area. He would like an agreement it would never be used as access to Woodward.

R. Ayotte said he didn't need to go that way; Savage Rd. is perfect.

R. Wisniewski said at the time of that agreement he owned about 75 acres and five frontages on Woodward which he went on to explain. One was purchased by the Ayottes, one directly across the street, now Drucker, Mr. Labonte's house and his house and road at the top of the road, and his

back land fronting on Savage. His daughter wanted to build a house at about the same time as the Ayottes. He came to the ZBA because they lacked necessary frontage. They tried to include frontage on Woodward and on Savage and was told they couldn't. The request for variance had to be on the merit of the presentation for the request – whether it met the five criteria. Even though Drucker lot had five acres that was how it went at that time.
Z. Tripp asked for further questions from the Board. There were none.
Z. Tripp closed the public portion of the meeting and asked the applicant to read his application to go through the criteria for a variance. C. Wilson Sullivan read the application into the record.

1. Granting the variance would not be contrary to the public interest because:
Granting the variance would not be contrary to the public interest because allowing a lot to be created that has 150 feet of frontage on one public road and 99 feet of frontage on another public road, but not 200 feet of contiguous road frontage would not unduly or to a marked degree violate the basic zoning objectives of the Zoning Ordinance. The underlying reason for the frontage requirement is to insure that houses are adequately spaced. The design of this subdivision as shown on the Conceptual Lot Line Revision Sketch clearly shows that the granting of the Variance would not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. The neighborhood consists of industrial uses, a condominium project, a Public Service Company of New Hampshire transmission line, and four (4) abutting residential properties, each of which consists of acreage well below the current zoning requirements of two (2) acres.

2. The use is not contrary to the spirit of the ordinance because:
If the Variance were granted, the spirit of the Ordinance would be observed because the goals of the Zoning Ordinance are to insure that houses are not constructed too near one another and given the location of this property and the surrounding properties, then the goals of the Zoning Ordinance would not be violated by the approval of the relief requested by the Applicant.

3. Granting the variance would do substantial justice because:
Granting the Variance would do substantial justice because it meets the guiding rules that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The loss to the individual in this instance would be that the Applicant would have a five (5) acre lot in an area that is industrial in nature and where the surrounding individual lot owners own lots that are substantially less than one (1) acre in size. Clearly in this instance, there is a loss to the individual, and there is no gain to the general public.

4. The proposed use would not diminish surrounding property values:
Granting the Variance would not diminish the value of the surrounding properties because the use of the lot to be created is residential in use and the properties surrounding the Applicant's land are both industrial and residential. The addition of another house on a two (2) acre lot in this location certainly would not diminish the value of the surrounding property.

5. Denial of the variance would result in unnecessary hardship.
A). "Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:
i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:
No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because

the relief requested may be granted to this property without frustrating the purpose of the Ordinance. The special conditions to this property are several. One is that it is a five (5) acre lot in an area where only two (2) acres is required, and in addition, the proposed lot would have approximately 250 feet of frontage, but the frontage would not be contiguous. The other special conditions to this property is that it is surrounded by industrial property, a condominium complex, and individual house lots well under the current required regulations of two (2) acres. Granting of the Variance would not affect the neighboring properties and the Milford Zoning goals in a general sense, and for that reason, this particular Ordinance provision and the specific application of this property constitutes an unnecessary hardship.

ii) and; The proposed use is a reasonable one because:

The proposed use is a reasonable one because it allows a single-family house to be built upon a two (2) acre lot with a total of 250 feet of road frontage. Certainly the construction of a house on this size lot is a reasonable use in this particular area.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

In the event that the Board should find that the criteria set forth above is not established, then only two (2) special conditions of this property are distinguished from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance and the Variance is necessary to enable a reasonable use of it due to the fact that this is a five (5) acre lot, surrounded by much smaller single-family house lots, industrial uses, and a condominium in which the residences are located close to one another.

J. Dargie asked about any vote by a previous Zoning Board re change of use; it appeared 10/8 had two lots with access through it. There is an access easement on 6/41 which must go back to 6/40-1. How do they know when the previous Zoning Board allowed that easement. That was after rules re 200 ft of frontage were put in, and they have no frontage. Her problem was counting 10-8 as frontage. She would take that 10/8 off because it is already encumbered by two other deeds with another Zoning Board decision. Could this be viewed without using10/8?

Z. Tripp had a similar thought. He agreed with some of the public comments that the requirement for 200 ft frontage is not intended to be frontage on two different roads. He didn't believe the 250 ft to look legitimate. In evaluating the five criteria he only used 150 ft on Savage Rd to meet the intent of that frontage requirement. When reviewing the application he considered a condition that, if approved, any access be off Savage Rd. But knowing they have to go to the Planning Board he was thinking of leaving that to the Planning Board given the complication of access points, easements, pre-existing condition, and letting the Planning Board iron out that restriction.

F. Seagroves said if they grant this they are stating 150 on Savage Rd, not the other 99 ft.

M. Thornton said they were discussing a Class V road only.

J. Dargie asked whether there were any other stipulations in 1989 related to those other two.

Z. Tripp read from a copy of the minutes submitted by a member of the audience of the previous ZBA that had stipulations. It was received Nov. 6, 2014 during public meeting. It is a copy of notice of hearing dated March 30, 1989, Case No. 439. The Board granted the request with the stipulations that there could only be one access road to serve two lots; there could be only two lots; each lot could only contain a single-family home; subject to Planning Board approval. This was in regard to subdividing Tax Map 6, Lot 6-40.

J. Dargie asked if that was the one being discussed. F. Seagroves said they were discussing two lots.
Z. Tripp said it looked that way.
S. Fournier asked to answer the questions about the document. It mentions 6/40 because it has 30 ft. easement.
J. Dargie said that was the one she asked about.
S. Fournier said the driveway goes to the end of 10/8 and between the 30 ft. easement. It cut across 6/40 to get to those lots. That is why they mention 6/40. But it refers to 6/40 and 6/41-1.
M. Thornton remarked it refers to two lots. If one lot is encumbered because of frontage, there are not two lots.
Z. Tripp said applicant is combining 10/8 and then subdividing that new larger lot into two lots.
M. Thornton said if that were the only consideration it would be moot and move forward. The only consideration is frontage. Are they allowed to consider cases they have had in the past?
Z. Tripp said every case has to be handled on its own.
M. Thornton said on its own merits.
Z. Tripp suggested if they feel they can meet the five criteria attaching a condition that any access be off Savage Rd pending Planning Board approval and considering any previous considerations or rules.
J. Dargie asked about changing the choice of words that says 250 ft and say the frontage is 150 ft., or 151 ft, whatever it is.
Z. Tripp agreed. If they find it met the five criteria they could grant a motion for 150 ft. on Savage Rd. or something similar.
Z. Tripp moved on to the discussion of the criteria.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves referred to the Handbook stating to generate no harm. They heard from abutters about losing their view. He understood, but felt that view was no harm.
J. Dargie said her concern was road cut to Savage Rd because it is a bad area. Could that be harm? It could be. Coming out of one of those drives it is already a bad area. But the Planning Board would really look at where the driveway will work. Since ZBA said they can't use Woodward Dr., the Planning Board. could say the only option is Savage Rd?
Z. Tripp said they could.
J. Dargie said she would say granting would not be contrary to the public interest.
M. Thornton said it would not be contrary to public interest because you are not talking a driveway with five or six apartments. Re the concept of a park in that area where it sits with an open view, absent another reason for not having a buildable lot, it should not be incumbent on the applicants to sit and pay taxes on something that could be made into something that would create money The town will not benefit by denying it. It would come out better (by granting). But they cannot take that into consideration. He didn't see how an approach to a driveway harmed anyone and didn't see it would be of concern to the town. They are not talking about more than one house. For that reason, he said it was not contrary to the public interest.
Z. Tripp said they could grant without being contrary to public interest. As he had stated, he will only consider 150 ft on Savage because he didn't believe adding frontage on Woodward was the intent of the requirement. Having 150 ft on Savage Rd. vs. 200 ft would not unduly and to a marked degree violate the basic zoning objectives or alter the essential character of the neighborhood because the immediate neighborhood has industrial uses and

high density subdivision and small lots with less frontage and higher density than this lot would produce. It is not changing the character of the neighborhood.
L. Harten agreed. He didn't believe if this was granted it would not be contrary to public interest, for the various reasons the other members of the board stated.

2. Could the variance be granted without violating the spirit of the ordinance?

J. Dargie still struggling because in her mind it seems to make sense to leave 10/8 with 6/40 and 41 because they have the road. If those two lots haven't been combined yet, it seemed they were adding it to meet frontage that they don't need.
Z. Tripp said that was his question to Bill Parker re process. They are to evaluate the proposed lot as in the application
J. Dargie said it is a lot consolidation and the proposed lot is what they are looking at. In her mind, she didn't think the 10/8 was appropriate with that lot for the people. That is their road. For 6/41, that is the only way they get out. And then there is the easement and right of way.
Z. Tripp said the Planning Board level would work that out. This issue was whether the proposed L-shaped lot with 150 ft on Savage Rd. is contrary to the spirit of the ordinance and the rest of the question.
J. Dargie asked if they are not using that lot to decide, applicants could make that lot into one anyway.
Z. Tripp said they could combine those two lots if the Planning Board approved.
J. Dargie said, or, when they left, they could go there without combining that lot since they weren't using that lot to make their decision.
Z. Tripp said they could probably do that also.
J. Dargie said it could be granted without violating the spirit, which is to prevent high density and have reasonable density. She understood neighbors' concerns with cutting trees because that happened to her. When they cut down all the trees there is more noise, etc. But the spirit of the ordinance is not toward that. They could grant without violating the spirit.
F. Seagroves said the Handbook discusses spirit being observed, health, safety and general welfare of the community. He agreed with Joan about cutting trees behind your property but they have a right to do what they want with their property within the law.
M. Thornton said yes. It comes to question of density. Essentially there is another lot. When combining, it still comes out to just two houses. He felt the 150 ft. substantially satisfied in this case the ideal of the Planning Board to limit the number of houses on a stretch of road.
L. Harten agreed. He didn't believe they were into a density situation that will be objectionable to the neighborhood or the Town. They were talking about approving something 150 ft. as opposed to 200 ft. He didn't see that was significant in this case. It could be granted without violating the spirit of the ordinance.
Z. Tripp agreed with the rest of the board. The spirit of the Ordinance is density. With an odd-shaped lot one could imagine a lot just wide enough for two setbacks and two houses. It could be really deep and you could stack houses on top of each other. It was a reasonable shape with reasonable room inside the lot to have the right acreage and granting would not threaten the health, safety and general welfare of the community.
F. Seagroves added that Residence R intent is to provide for low density residence and agricultural land use. That is where they talk about two acres to keep low density. They will have two acres.
Z. Tripp agreed.

3. Would granting the variance do substantial justice?
F. Seagroves – yes. They are talking about loss to the individual outweighed by gain to the public. In Residential R house lots are two acres. This will be two acres. The problem is the shape of the acres and location of the lot. The request for variance is because where the lot is, they have 150 ft of frontage.
M. Thornton – yes. To cause the applicants to maintain a park area is unreasonable financial burden. That is part of follow-up question of hardship but blends into this. It would do substantial justice.
L. Harten believed granting would do substantial justice. As Fletcher mentioned any loss to the individual not outweighed by gain to the general public is an injustice. The loss to the applicant is not outweighed by gain to the public.
Z. Tripp agreed with the Board. He reiterated the guiding principle that loss to the individual not outweighed by gain to the public. It would be a loss to the applicant to have two conforming lots lacking 50 ft of frontage. It could be granted and still do substantial justice.
J. Dargie agreed. She had to rethink what that meant – substantial justice.
4.. Could the variance be granted without diminishing the value of abutting property?
M. Thornton said it could. The value of abutting property might even be increased depending on the dwelling that is built but that was an issue for the Planning Board as is site plan. When they send it forward they have to send it with an addendum that that board would have to consider that because ZBA can't. Answer is yes, it can be granted without diminishing abutting properties.
F. Seagroves said they are in Residence R. Some of the houses on Woodward are less than an acre. He didn't think it would diminish property value.
L. Harten agreed. It is a two acre lot which certainly meets Residence R size requirement. Depending on the type of dwelling that is constructed, it might possibly enhance the value of abutting property.
J. Dargie agreed. This was the same property where they'd had a discussion about a business. Her concern was taking into consideration how far away all that was. Trying to remember what was the basis for that decision. If there is another building, she guessed it only affected the new property. It could be granted without diminishing the property of abutters.
Z. Tripp agreed with the board. Lot size is still conforming. He didn't believe 50 ft less frontage would reduce value of surrounding properties which are industrial, high density apartments and residences on Woodward. Addressing concerns of abutters on Woodward, he understood their concerns of having forest behind them going away to a residential lot, but all property owners in Milford have a right to do certain things with their land.
5. Would denial of the variance result in unnecessary hardship taking the following into consideration:
A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; ii. The proposed use is a reasonable one.
B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves said not granting would result in unnecessary hardship. Re fair & substantial relationship between the general purposes of the ordinance, the ordinance states in Residential R there will be two acres with 200 ft. of frontage on Class V road or better. He thought the criteria were met for two acres and due to the shape of the lot they can't meet the 200 ft. He thought that was a hardship. The proposed use is a reasonable one.
L. Harten believed denial would result in unnecessary hardship. Re A)ii, the proposed use is a reasonable one.
M. Thornton – yes. He considered in "no fair and substantial relationship exists between the general public purposes of the ordinance provision" of the application, no corner lot could be sold due to its being on a corner if it had less than the number of conforming feet or better.
J. Dargie – yes. No fair and substantial relationship exists between the general public purposes of the ordinance provision and specific application. The proposed use is a reasonable one.
Z. Tripp – yes. Denial would result in unnecessary hardship. Zoning ordinances impose some hardship on all property by restricting use, but these restrictions are balanced by the same restrictions on parcels within the same zone. When imposed and shared equally there is no hardship. What he felt was unique about this lot, prior to subdivision- it was an old lot- the house was probably built in the 1960's according to the tax map, prior to residential R zoning. It is surrounded by industrial, high density subdivisions, and this residence which was built before the Residential R criteria. Other lots on Woodard are smaller. On the tax map, they range from 95 to 133 ft., below the 150 ft. proposed. Interesting comparison is 10-16 directly across the street from what was 10-8. It is a large oddly shaped 5 acre parcel in size with access also on Savage Rd, and it has 129 ft of frontage. There are plenty of other residential lots in this zone that do not have 200 ft. By definition, it would be a hardship to require this lot to have it. No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of the provision to the property. Because of the criteria stated in #1, contrary to the public interest and spirit of the ordinance, full application of the ordinance to this property is not necessary to a valid public purpose. Even though it has less frontage it is still a reasonable lot. It is not a small frontage they are trying to tuck behind a lot and is reasonably laid out. Re ii, the proposed use is a reasonable one. Restricting this lot would interfere with reasonable use considering its unique setting and given that property frontage is 150 ft which is larger than surrounding properties, it would interfere with the proposed reasonable use and would be a hardship.
Z. Tripp asked about a condition and asked for proposed wording.
J. Dargie suggested approving the lot with 150 ft. on Savage with the condition that Woodward is not to be exited or 10/8 is not to be considered part of the lot.
M. Thornton added that the Planning Board is able to find a building site within the footprint of the desired new lot, because they may not find a building site within those two acres.
Z. Tripp added, pending Planning Board approval.
F. Seagroves said if they can't build on it, it is just a lot.
J. Dargie suggested wording it to follow the intention of the 1989 Zoning Board ruling that there be only two access roads to 6/41, as was mentioned by an abutter.
F. Seagroves felt the Board wasn't there for that.
J. Dargie said if the previous zoning board stated it would only have access to those two lots. That was agreed when it was sold. She guessed it must be in the deed.

M. Thornton said from what he heard there was no real consideration of economical access through the small lot.
J. Dargie said it appeared there was already a road there. Potentially someone could join that road.
F. Seagroves said the Zoning Board has been tasked with just giving yea or nay,
J. Dargie said they are basing it on 100 ft. of frontage and that 99 ft is not frontage.
Z. Tripp proposed, concerning approval of this variance, with a condition that access be restricted to 150 ft of frontage on Savage Road and pending Planning Board approval of the subdivision and any site plan.
M. Thornton made the motion.
F. Seagroves seconded.

Z. Tripp called for a vote.

1. Would granting the variance not be contrary to the public interest?
F. Seagroves – yes; M. Thornton – yes; L. Harten – yes; J. Dargie – yes; Z. Tripp - yes
2. Could the variance be granted without violating the spirit of the ordinance?
M. Thornton – yes; L. Harten – yes; J. Dargie – yes; F. Seagroves – yes; Z. Tripp - yes
3. Would granting the variance do substantial justice?
L. Harten – yes; J. Dargie – yes; F. Seagroves – yes; M. Thornton – yes; Z. Tripp - yes
4. Could the variance be granted without diminishing the value of abutting property?
J. Dargie – yes; F. Seagroves – yes; L. Harten – yes; M. Thornton – yes; Z. Tripp - yes
5. Would denial of the variance result in unnecessary hardship taking the following into consideration:
A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; ii. The proposed use is a reasonable one.
B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
F. Seagroves – yes; M. Thornton – yes; L. Harten – yes; J. Dargie – yes; Z. Tripp – yes
Z. Tripp asked if there was a motion to approve case # 2014-18, a request for a variance, with the agreed-upon conditions.
J. Dargie made the motion to approve Case #2014-18 with the agreed –upon conditions
M. Thornton seconded the motion.

Final Vote:
F. Seagroves – yes
M. Thornton - yes
L. Harten – yes
J. Dargie – yes
Z. Tripp - yes

Case #2014-18 was approved by a unanimous vote.
Z. Tripp informed applicants they had been approved and reminded the applicants of the thirty (30) day appeal period.